

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MARCOS A. MANUEL,

Plaintiff,

v.

KRISTI MCGOWAN, et al.,

Defendants.

NO: 12-CV-5108-TOR

ORDER GRANTING DEFENDANTS'  
MOTION FOR PROTECTIVE ORDER

BEFORE THE COURT is Defendants' Motion for Protective Order (ECF No. 23). This matter was submitted for consideration without oral argument. The Court has reviewed the briefing and the record and files herein, and is fully informed.

BACKGROUND

In January 2012, *pro se* Plaintiff Marcos A. Manuel was removed from the prison work camp at Coyote Ridge Correctional Center and placed in a higher custody facility due to an Immigration and Customs Enforcement ("ICE") detainer. ECF No. 8-1. In August 2012 Plaintiff filed a Complaint alleging violations of his

1 civil rights under 42 U.S.C. § 1983. ECF No. 1. Plaintiff alleges that his removal  
2 from the work camp, and the prohibition on his participation in vocational work  
3 programs due to the ICE detainer, is discriminatory and unconstitutional. On April  
4 26, 2013, Defendants filed a 12(b)(6) Motion to Dismiss for Failure to State a  
5 Claim, in which they raise the issue of qualified immunity. ECF No. 21.

6 Defendants were served with Plaintiff's First Set of Interrogatories on April  
7 8, 2013. On April 17, 2013, the parties discussed postponement of discovery until  
8 the Court ruled on the Motion to Dismiss; but failed to reach a resolution. ECF No.  
9 23-1. Presently before the Court is Defendants' motion for a protective order to  
10 stay discovery pending the Court's decision on their motion to dismiss.

#### 11 DISCUSSION

12 For good cause, the court may deny or limit discovery "to protect a party or  
13 person from annoyance, embarrassment, oppression, or undue burden or  
14 expense...." Fed. R. Civ. P. 26(c); *see also Little v. City of Seattle*, 863 F.2d 681,  
15 685 (9th Cir.1988). The Court has broad discretion to stay discovery while a  
16 dispositive motion is pending. *See, e.g., Orchid Biosciences, Inc. v. St. Louis*  
17 *University*, 198 F.R.D. 670, 672 (S.D. Cal. 2001). However, the party requesting a  
18 protective order bears the burden of showing good cause. *Rivera v. NIBCO, Inc.*,  
19 364 F.3d 1057, 1063 (9th Cir. 2004). The Supreme Court has repeatedly held that  
20 when qualified immunity is raised as a defense by government officials, discovery

1 should be stayed until the threshold issue of immunity is resolved. *Harlow v.*  
2 *Fitzgerald*, 457 U.S. 800, 816-818 (1982) (“bare allegations of malice should not  
3 suffice to subject government officials either to the costs of trial or to the burdens  
4 of broad-reaching discovery”); *see also Anderson v. Creighton*, 483 U.S. 635, 651  
5 (1987).

6 Defendants raised the defense of qualified immunity in their 12(b)(6) motion  
7 to dismiss. *See* ECF No. 21. Plaintiff responds that discovery will provide the  
8 Court with evidence that the conduct of the Defendants was discriminatory and not  
9 based on any written policy. ECF No. 24 at 3. However, Plaintiff fails to address  
10 the qualified immunity issue in the context of Defendants’ request to stay  
11 discovery. The Supreme Court has emphasized that the qualified immunity  
12 question should be resolved at the earliest possible stage of litigation. *See Harlow*  
13 *v. Fitzgerald*, 457 U.S. at 816. Thus, the Court finds good cause to stay all  
14 discovery, pending the Court’s ruling on Defendants’ motion to dismiss.

15 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 16 1. Defendants’ Motion for Protective Order (ECF No. 23) is **GRANTED**.
- 17 2. All discovery in this matter is hereby **STAYED** pending this Court’s ruling  
18 on Defendants’ Motion to Dismiss.

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1 The District Court Executive is hereby directed to enter this Order and  
2 furnish copies to Plaintiff and to counsel for Defendants.

3 **DATED** May 30, 2013.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE  
United States District Judge